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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

MOD SUPER FAST PIZZA, LLC, a Delaware
 corporation,

Plaintiff,

v.

CARL CHANG, et al.,

Defendants.

CASE NO. 2:12-CV-01359-TSZ

**PIEOLOGY SPECTRUM, LLC'S
 ANSWER TO SECOND AMENDED
 COMPLAINT**

JURY DEMAND

AND RELATED COUNTERCLAIM

Defendant Pieology Spectrum, LLC (“Spectrum”), for itself and for no other defendant, hereby submits its Answer to plaintiff MOD Super Fast Pizza, LLC’s (“MOD”) Second Amended Complaint (the “Complaint”). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that the unnumbered paragraphs, captions, and/or headings in the Complaint are treated as allegations, such paragraphs, captions, and headings are hereby denied.

1. Spectrum admits that MOD purports to bring claims for trade dress infringement, misappropriation of trade secrets, and tortious interference with contractual

1 relations, breach of contract, civil conspiracy, and permanent injunctive relief, but denies
2 that MOD's claims have any merit.

3 2. Spectrum admits that Chang is a manager of a company that owns and
4 operates pizza restaurants in Southern California under the name "Pieology Pizzeria."
5 Spectrum admits that Pieology Pizzeria is not connected to, affiliated with, or authorized by
6 MOD. Except as expressly admitted and alleged herein, Spectrum denies each and every
7 allegation contained in the corresponding paragraph of the Complaint.

8 I. PARTIES

9 1. Spectrum lacks sufficient knowledge or information regarding the allegations
10 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
11 basis, denies all such allegations.

12 2. Spectrum admits that Carl Chang is a resident of Southern California. Except
13 as expressly admitted and alleged herein, Spectrum denies the allegations contained in the
14 corresponding paragraph of the Complaint.

15 3. Spectrum lacks sufficient knowledge or information regarding the allegations
16 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
17 basis, denies all such allegations.

18 4. Spectrum admits that Pieology Spectrum, LLC is a limited liability company
19 organized under the laws of the State of Delaware, with its principal place of business in
20 Rancho Santa Margarita, California. Except as expressly admitted and alleged herein,
21 Spectrum denies the allegations contained in the corresponding paragraph of the complaint.

22 5. Spectrum admits that The Little Brown Box, LLC ("LBBP") is a limited
23 liability company organized under the laws of the State of Delaware, with its principal place
24 of business in Rancho Santa Margarita, California. Spectrum admits that it is wholly-owned
25 by LBBP. Except as expressly admitted and alleged herein, Spectrum denies the allegations
26 contained in the corresponding paragraph of the Complaint.

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6. Spectrum admits that Pieology Franchise, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Rancho Santa Margarita, California. Spectrum admits that Pieology Franchise, LLC is wholly-owned by Spectrum, which is its sole member. Except as expressly admitted and alleged herein, Spectrum denies the allegations contained in the corresponding paragraph of the Complaint.

II. JURISDICTION AND VENUE

1. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Spectrum. To the extent a response is required, Spectrum admits that this Court has subject matter jurisdiction over the claims alleged in the Complaint.

2. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Spectrum. To the extent a response is required, Spectrum denies that venue is proper in this judicial district.

3. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Spectrum. To the extent a response is required, Spectrum denies the allegations contained in the corresponding paragraph of the Complaint.

III. FACTS

CREATION AND DEVELOPMENT OF MOD'S

TRADE DRESS AND TRADE SECRETS.

1. Spectrum lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

2. Spectrum lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

1 3. Spectrum lacks sufficient knowledge or information regarding the allegations
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
3 basis, denies all such allegations.

4 4. Spectrum lacks sufficient knowledge or information regarding the allegations
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
6 basis, denies all such allegations.

7 5. Spectrum denies that MOD restaurants feature a distinctive, non-functional
8 combination of design, look, feel, menu, and style of service. Spectrum lacks sufficient
9 knowledge or information regarding the remaining allegations contained in the
10 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
11 such allegations.

12 6. Spectrum denies that MOD owns any protectable trade dress. Spectrum
13 denies that MOD uses a distinctive, non-functional combination of features. Spectrum lacks
14 sufficient knowledge or information regarding the remaining allegations contained in the
15 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
16 such allegations.

17 7. Spectrum admits that the articles quoted in the corresponding paragraph of
18 the Complaint in all respects speak for themselves. Spectrum denies that MOD owns any
19 protectable trade dress. Spectrum denies that the “recognition and popularity of the MOD
20 trade dress is evident” from the articles quoted in the corresponding paragraph of the
21 Complaint. Spectrum lacks sufficient knowledge or information regarding the remaining
22 allegations contained in the corresponding paragraph of the Complaint to admit or deny,
23 and, on that basis, denies all such allegations.

24 8. Spectrum denies each and every allegation contained in the corresponding
25 paragraph of the Complaint.
26
27

1 9. Spectrum lacks sufficient knowledge or information regarding the allegations
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
3 basis, denies all such allegations.

4 **DEFENDANTS' BACKGROUND WITH MOD**

5 10. Spectrum lacks sufficient knowledge or information regarding the allegations
6 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
7 basis, denies all such allegations.

8 11. Spectrum lacks sufficient knowledge or information regarding the allegations
9 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
10 basis, denies all such allegations.

11 12. Spectrum lacks sufficient knowledge or information regarding the allegations
12 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
13 basis, denies all such allegations.

14 13. Spectrum lacks sufficient knowledge or information regarding the allegations
15 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
16 basis, denies all such allegations.

17 14. Spectrum lacks sufficient knowledge or information regarding the allegations
18 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
19 basis, denies all such allegations.

20 15. Spectrum lacks sufficient knowledge or information regarding the allegations
21 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
22 basis, denies all such allegations.

23 16. Spectrum lacks sufficient knowledge or information regarding the allegations
24 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
25 basis, denies all such allegations.

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1 17. Spectrum lacks sufficient knowledge or information regarding the allegations
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
3 basis, denies all such allegations.

4 18. Spectrum lacks sufficient knowledge or information regarding the allegations
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
6 basis, denies all such allegations.

7 19. Spectrum lacks sufficient knowledge or information regarding the allegations
8 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
9 basis, denies all such allegations.

10 20. Spectrum lacks sufficient knowledge or information regarding the allegations
11 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
12 basis, denies all such allegations.

13 21. Spectrum lacks sufficient knowledge or information regarding the allegations
14 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
15 basis, denies all such allegations.

16 **DEFENDANTS' UNLAWFUL ACTIVITIES**

17 22. Spectrum admits that Pieology Spectrum, LLC was formed in March 2010.
18 Spectrum lacks sufficient knowledge or information regarding the remaining allegations
19 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
20 basis, denies all such allegations.

21 23. Spectrum lacks sufficient knowledge or information regarding the allegations
22 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
23 basis, denies all such allegations.

24 24. Spectrum admits that Pieology Pizzeria in Fullerton, California opened in
25 2011. Spectrum denies utilizing, relying on, sharing, taking advantage of, exploiting, or
26 communicating to third parties any confidential information or trade secrets belonging to
27 MOD. Spectrum lacks sufficient knowledge or information regarding the allegations

1 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
2 basis, denies all such allegations.

3 25. Spectrum admits that James Markham is not a member of Pieology
4 Spectrum, LLC, and that has no ownership interest or professional role with Pieology
5 Pizzeria. Spectrum admits that Carl Chang has an indirect ownership interest in Pieology
6 Spectrum, LLC, and Pieology Pizzeria, and that he is involved in the operation of the same.
7 Spectrum denies that it is engaging in the “unauthorized exploitation of MOD’s intellectual
8 property, including its trade dress, trade secrets, [or] confidential information.” Spectrum
9 lacks sufficient knowledge or information regarding the allegations contained in the
10 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
11 such allegations.

12 26. Spectrum admits that the Pieology website states that, inter alia, “Pieology
13 prides itself on providing the best tasting, healthiest kustom pizza in the world. Using only
14 the freshest ingredients, Pieology provides smoking hot pizzas in under 5 minutes.”
15 Spectrum further admits that the Pieology website in all respects speaks for itself.

16 27. Spectrum denies that Pieology’s design, look, feel, menu, and/or style of
17 service are confusingly similar to MOD’s restaurants.

18 a. Spectrum admits that Pieology offers individualized pizzas, made to
19 order, cooked at a temperature sufficient to cook a pizza in approximately five minutes, in
20 ovens visible to the customer, and served within approximately five minutes. Spectrum lacks
21 sufficient knowledge or information about MOD’s restaurants to admit or deny the
22 allegations regarding MOD’s restaurants, and, on that basis, denies those allegations. Except
23 as expressly admitted and alleged herein, Spectrum denies the allegations contained in the
24 corresponding paragraph of the Complaint.

25 b. Spectrum admits that Pieology offers plain cheese pizza at one price,
26 and that it offers pizzas with unlimited toppings at a second price. Spectrum lacks sufficient
27

1 knowledge or information about MOD's restaurants to admit or deny the allegations
2 regarding MOD's restaurants, and, on that basis, denies those allegations.

3 c. Spectrum admits Pieology offers seven pizzas with pre-determined
4 toppings, that it identifies these pizzas by number, and that six of these pizzas are the same
5 price as pizza with unlimited toppings. Spectrum admits that the Pieology's #3 pizza has bbq
6 sauce, chicken, mozzarella, gorgonzola, red onion, and cilantro. Spectrum lacks sufficient
7 knowledge or information about MOD's restaurants to admit or deny the allegations
8 regarding MOD's restaurants, and, on that basis, denies those allegations. Except as
9 expressly admitted and alleged herein, Spectrum denies the allegations contained in the
10 corresponding paragraph of the Complaint.

11 d. Spectrum admits that Pieology offers "strips" made from pizza dough
12 and topped with either herb butter or a cinnamon sugar sauce. Spectrum lacks sufficient
13 knowledge or information about MOD's restaurants to admit or deny the allegations
14 regarding MOD's restaurants, and, on that basis, denies those allegations. Except as
15 expressly admitted and alleged herein, Spectrum denies the allegations contained in the
16 corresponding paragraph of the Complaint.

17 e. Spectrum admits that Pieology offers salads. Spectrum lacks
18 sufficient knowledge or information about MOD's restaurants to admit or deny the
19 allegations regarding MOD's restaurants, and, on that basis, denies those allegations.

20 f. Spectrum denies each and every allegation contained in the
21 corresponding paragraph of the Complaint.

22 g. Spectrum denies each and every allegation contained in the
23 corresponding paragraph of the Complaint.

24 h. Spectrum admits that, at one time, Pieology sold individually wrapped
25 Hostess "Ding Dongs" for \$1.00. Spectrum admits that Pieology displayed the Ding Dongs
26 on a circular place near the cash register. Spectrum lacks sufficient knowledge or
27 information about MOD's restaurants to admit or deny the allegations regarding MOD's

1 restaurants, and, on that basis, denies those allegations. Except as expressly admitted and
2 alleged herein, Spectrum denies the allegations contained in the corresponding paragraph.

3 i. Spectrum admits that Pieology serves its pizzas on a round tray lined
4 with paper with the customer's name written in black marker, and that a server shouts the
5 customer's name when an order is ready. Spectrum lacks sufficient knowledge or
6 information about MOD's restaurants to admit or deny the allegations regarding MOD's
7 restaurants, and, on that basis, denies those allegations. Except as expressly admitted and
8 alleged herein, Spectrum denies the allegations contained in the corresponding paragraph of
9 the Complaint.

10 j. Spectrum lacks sufficient knowledge or information about the
11 allegations in the corresponding paragraph of the Complaint to admit or deny, and, on that
12 basis, denies all such allegations.

13 28. Spectrum denies each and every allegation contained in the corresponding
14 paragraph of the Complaint.

15 29. Spectrum lacks sufficient knowledge or information regarding the allegations
16 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
17 basis, denies all such allegations.

18 30. To the extent that allegations in the corresponding paragraph of the
19 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
20 sufficient knowledge or information regarding the remaining allegations contained in the
21 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
22 such allegations.

23 31. Spectrum admits that the Pieology website states that it is "fast expanding."
24 Spectrum admits that it is pursuing opportunities for additional locations and potential
25 franchise opportunities, and further admits that Franchise has entered into franchise
26 agreements and development rights agreements on behalf of Defendants. Spectrum admits
27 that Franchise was formed in 2012, and further admits that Franchise receives franchise fees

and royalties from franchisees. Except as expressly admitted and alleged herein, Spectrum denies the allegations contained in the corresponding paragraph of the Complaint.

IV. CLAIMS AND CAUSES OF ACTION

Count 1: Trade Dress Infringement Under 15 U.S.C. § 1125(a)

1. In response to the corresponding paragraph of the Complaint, Spectrum hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

2. Spectrum denies each and every allegation contained in the corresponding paragraph of the Complaint.

3. Spectrum denies each and every allegation contained in the corresponding paragraph of the Complaint.

4. Spectrum denies each and every allegation contained in the corresponding paragraph of the Complaint.

5. Spectrum denies that MOD has been damaged. To the extent that allegations in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

6. Spectrum denies that MOD has been damaged. To the extent that allegations in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

Count 2: Misappropriation of Trade Secrets Under RCW 19.108 et seq.

7. In response to the corresponding paragraph of the Complaint, Spectrum hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

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1 8. Spectrum lacks sufficient knowledge or information regarding the allegations
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
3 basis, denies all such allegations.

4 9. Spectrum lacks sufficient knowledge or information regarding the allegations
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
6 basis, denies all such allegations.

7 10. Spectrum lacks sufficient knowledge or information regarding the allegations
8 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
9 basis, denies all such allegations.

10 11. To the extent that allegations in the corresponding paragraph of the
11 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
12 sufficient knowledge or information regarding the remaining allegations contained in the
13 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
14 such allegations.

15 12. To the extent that allegations in the corresponding paragraph of the
16 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
17 sufficient knowledge or information regarding the remaining allegations contained in the
18 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
19 such allegations.

20 13. Spectrum denies that MOD has been damaged. To the extent that allegations
21 in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies
22 those allegations. Spectrum lacks sufficient knowledge or information regarding the
23 remaining allegations contained in the corresponding paragraph of the Complaint to admit or
24 deny, and, on that basis, denies all such allegations.

Count 3: Tortious Interference with Contractual Relations

14. In response to the corresponding paragraph of the Complaint, Spectrum hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

15. Spectrum lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

16. Spectrum lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. To the extent that allegations in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. Spectrum denies that MOD has been damaged. To the extent that allegations in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

Count 4: Breach of Contract

19. In response to the corresponding paragraph of the Complaint, Spectrum hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

20. Spectrum denies that it entered any contractual agreements with MOD. Spectrum lacks sufficient knowledge or information regarding the remaining allegations

1 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that
2 basis, denies all such allegations.

3 21. To the extent that allegations in the corresponding paragraph of the
4 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
5 sufficient knowledge or information regarding the remaining allegations contained in the
6 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
7 such allegations.

8 22. To the extent that allegations in the corresponding paragraph of the
9 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
10 sufficient knowledge or information regarding the remaining allegations contained in the
11 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
12 such allegations.

13 23. Spectrum denies each and every allegation contained in the corresponding
14 paragraph of the Complaint.

15 24. Spectrum denies that MOD has been damaged. To the extent that allegations
16 in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies
17 those allegations. Spectrum lacks sufficient knowledge or information regarding the
18 remaining allegations contained in the corresponding paragraph of the Complaint to admit or
19 deny, and, on that basis, denies all such allegations.

20 **Count 5: Civil Conspiracy**

21 25. In response to the corresponding paragraph of the Complaint, Spectrum
22 hereby repeats and incorporates herein by reference the responses to the preceding
23 paragraphs, as though fully set forth herein.

24 26. To the extent that allegations in the corresponding paragraph of the
25 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
26 sufficient knowledge or information regarding the remaining allegations contained in the
27

1 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
2 such allegations.

3 27. To the extent that allegations in the corresponding paragraph of the
4 Complaint are directed to Spectrum, Spectrum denies those allegations. Spectrum lacks
5 sufficient knowledge or information regarding the remaining allegations contained in the
6 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all
7 such allegations.

8 28. Spectrum denies that MOD has been damaged. To the extent that allegations
9 in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies
10 those allegations. Spectrum lacks sufficient knowledge or information regarding the
11 remaining allegations contained in the corresponding paragraph of the Complaint to admit or
12 deny, and, on that basis, denies all such allegations.

13 **Count 6: Permanent Injunctive Relief**

14 29. In response to the corresponding paragraph of the Complaint, Spectrum
15 hereby repeats and incorporates herein by reference the responses to the preceding
16 paragraphs, as though fully set forth herein.

17 30. Spectrum denies that MOD has been damaged. To the extent that allegations
18 in the corresponding paragraph of the Complaint are directed to Spectrum, Spectrum denies
19 those allegations. Spectrum lacks sufficient knowledge or information regarding the
20 remaining allegations contained in the corresponding paragraph of the Complaint to admit or
21 deny, and, on that basis, denies all such allegations.

22 31. The allegations contained in the corresponding paragraph of the Complaint
23 are legal conclusions and require no response from Spectrum. To the extent a response is
24 required, Spectrum denies the allegations contained in the corresponding paragraph of the
25 Complaint.

32. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from Spectrum. To the extent a response is required, Spectrum denies the allegations contained in Paragraph 73 of the Complaint.

V. AFFIRMATIVE DEFENSES

In further answer to the Complaint, Spectrum asserts the following separate and affirmative defenses. Defendant deserves the right to raise additional affirmative defenses as they become known to it through discovery or investigation.

FIRST AFFIRMATIVE DEFENSE

1. Spectrum cannot be liable for the damages, if any, alleged in the Complaint and in each and every cause of action therein because each and every cause of action fails to state a claim and/or cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. Spectrum alleges that each of MOD's purported claims for relief against Spectrum is frivolous and unsupported.

THIRD AFFIRMATIVE DEFENSE

3. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

4. All of MOD's purported causes of action against Spectrum are barred by the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

9. MOD's alleged trade dress is not protectable trade dress, including, and without limitation, because the alleged trade dress is non-distinctive, lacks secondary meaning, lacks secondary meaning in the geographic area where the Pieology restaurants are located, and/or is both utilitarian and aesthetically functional.

TENTH AFFIRMATIVE DEFENSE

10. MOD's alleged trade secrets are not protectable trade secrets.

ELEVENTH AFFIRMATIVE DEFENSE

11. Each of MOD's purported causes of action against Spectrum fails because Spectrum has complied with all of its legal obligations with respect to MOD.

TWELFTH AFFIRMATIVE DEFENSE

12. MOD has not been damaged in the sums or manner alleged, or in any sum or manner, or at all.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, Spectrum states that MOD failed to mitigate, reduce, or avoid its damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Any injury or damage suffered or sustained by MOD, either as alleged in the Complaint or at all, was directly and proximately caused and contributed to by persons and entities other than Spectrum.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Spectrum alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory allegations contained in the Complaint. Accordingly, Spectrum expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

VI. PRAYER FOR RELIEF

WHEREFORE, defendant Spectrum prays for judgment as follows:

- A. That MOD take nothing by its Complaint and that judgment be entered in favor of Spectrum;
- B. That Spectrum be awarded its costs and attorneys' fees incurred herein; and
- C. That the Court grant such other relief as it deems just and proper.

VII. JURY DEMAND

Pursuant to Fed. R. Civ. P. 38 Spectrum demands a trial by jury on all issues so triable.

DATED: November 26, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ JESSICA BROMALL SPARKMAN

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